

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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EARL SMITH,

Plaintiff,

v.

Case No. 05-C-0162

ACTUANT CORPORATION,

Defendant.

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**ORDER**

On February 11, 2005, *pro se* plaintiff Earl Smith filed a complaint, alleging that his current employer is discriminating against him on the basis of his race and disability. On February 25, 2005, the court denied Smith's motion to proceed *in forma pauperis*, finding that he was able to pay the filing fee. The court received the filing fee in full on March 2, 2005. The court has not heard from Smith for over 13 months, and Smith has not moved for entry of default. It appears to the court that Smith is not diligently prosecuting this action. The court will dismiss this action with prejudice for lack of diligence. See Civil L.R. 41.3 ("Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action, the Court may enter an order or dismissal with or without prejudice. Any affected party can petition for reinstatement of the action within 20 days.").

Accordingly,

**IT IS ORDERED** that this action be and the same is hereby **DISMISSED** without prejudice for lack of diligence.

The clerk of court shall enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 20th day of April, 2006.

BY THE COURT:

s/J.P. Stadtmueller  
J.P. STADTMUELLER  
U.S. District Judge